

Remarks

Section 102

The first issue is whether the applicant's claims 1, 3, 7, 9 and 11 are anticipated by Headley (US Pat. No. 1,664,858). A review of the teachings of the reference indicates that it does not anticipate the pending claims.

A claim is anticipated only if each and every element as set forth in the claim is found in a single cited art reference. See *Verdegaal Bros. v. Union Oil of California*, 814 F.2d 628, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. See *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In the present instance, Headley (US Pat. No. 1,664,858) was cited as teaching all of the elements of the rejected claims.

Headley shows a platform supporting frame 11 (on which the user of the scooter stands) which is directly pivotally joined to the front wheel assembly (at P in the attached Figure 3 markup). The scooter is folded by a rotational movement of the supporting frame 11 and/or the front wheel assembly around the pivot "P". In practice, the front wheel assembly is simply laid down on the supporting frame 11 with its platform 29 as the first wheel assembly rotates about the pivot "P". When the scooter is folded, the front and rear wheels will be at opposite ends of the folded scooter. The dual pivot stay in Headley noted in the Office action consists of two pairs of stays, each made up of separate stays 33, 34 that are pivotally joined by rivets 37. These stays are necessary to prevent the scooter from collapsing when it is used, and pivot point 37 is required for the scooter to be foldable.

The present claim elements require a mechanism that is different from that shown by Headley. Specifically, the claims now require a substantially U-shaped dual pivot stay having its first ends pivotally mounted on the carriage and the second end pivotally mounted on the front wheel assembly. No such mechanism is shown in Headley. Instead, the two stays shown by Headley are not U-shaped. In Headley, because the two parts move in relation to each other, it cannot be said that they are not in any one fixed shape. In addition, the stays in the cited reference are not single piece as the amended claim now recites. Instead, they are two separate stays, 33 and 34.

Claims can only be found not novel if the identical claimed invention is disclosed in the cited prior art. In the present instance, at least two of the claimed elements are not found in the prior art. The present rejection should thus be reconsidered and withdrawn.

Section 103

The final issue is whether claims 5 and 8 are obvious in light of two cited references. In the Office action claims 5 and 8 were found to be rendered obvious by Headley (US Pat. No. 1,664,858) in further view of Altschul et al. (US Pat. No. 6,460,866). Again, reconsideration is warranted.

An obviousness determination requires determining the scope and content of the prior art and ascertaining the differences between the cited art and the claims at issue. See *Graham v. John Deere Co.*, 148 USPQ 459 (S.C. 1966). In the present instance, such a comparison reveals that at least one of the claimed elements is not taught or suggested by the cited references.

As seen above, the dual pivoting stay, as presently claimed by the applicant, is not disclosed by Headley. Given that this element is not found in the cited references, the

applicant's claims are not rendered obvious by the cited references.

Conclusion

The applicants respectfully request reconsideration in light of the submitted remarks and amendments. A notice of allowance is earnestly solicited. If any matter relating to this case needs to be discussed please call our office at (408) 297-9733 between 9 a.m. and 5 p.m. Pacific time.

Respectfully submitted,

CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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